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CASE NO._____

IN THE SUPREME COURT

OF THE

UNITED STATES OF AMERICA

OCTOBER TERM, 1984

VALENCIA TRICE BATISTE a/k/a VERONICA WILLIAMS,	
PETITIONER	ON PETITION FOR WRIT OF CERTIORARI
VS.	TO THE COURT OF APPEALS OF GEORGIA
THE STATE OF GEORGIA,	
RESPONDENT	

PETITION FOR WRIT OF CERTIORARI

Wade M. Crumbley
Crumbley & Crumbley
80 Macon Street
P.O. Box 775
McDonough, Georgia 30253
(404) 957-1815

Counsel for Petitioner

56 pp

QUESTIONS PRESENTED FOR REVIEW

I.

Does a state legislature have the power to enact a criminal statute making it an offense against state law to give an alias to a federal agent engaged in an investigation of drug trafficking in interstate commerce?

II.

Does conformity with certain elements of the United States Department of Justice, Drug Enforcement Administration "drug courier profile" provide probable cause authorizing a warrantless arrest and search of a person and his belongings?

PARTIES TO THE PROCEEDING BELOW

The only parties to the proceeding in the Court of Appeals of Georgia were the petitioner and the State of Georgia, acting by and through the Honorable Robert E. Keller, District Attorney, Clayton County, Georgia. A codefendant, Neely Gary Williams, took a separate appeal to the Court of Appeals of Georgia which was consolidated with petitioner's appeal in that court. To petitioner's knowledge, Neely Gary Williams has not sought relief in this court.

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CITATION TO OPINION BELOW

The judgment and opinion of the Court of Appeals of Georgia in this case is reported at 171 Ga. App. 807 (1984). The unofficial citation (Southeastern Reporter, 2d edition) is not available at this time. Copies of the majority opinion, the special concurrence, and dissenting opinion filed by the Court of Appeals of Georgia appear at pp. i-xii of the appendix to this petition.[1]

STATEMENT OF JURISDICTION

The judgment of the Court of Appeals of Georgia in this case was entered July 16, 1984. A motion for rehearing was filed in compliance with that court's rules and was denied on July 31, 1984 (see appendix pp. xiv-xviii). A petition for writ of certiorari was filed in the Supreme Court of Georgia in compliance with

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1. Only those portions of the opinion discussing the questions presented in this petition are reproduced. The remainder of the opinion concerned alleged trial errors, the co-defendant's appeal, and other matters of no relevance to this petition.

that court's rules, and was denied by a vote of 4 to 2 (Weltner, Justice, disqualified) on September 13, 1984 (see appendix p. xix). A motion for reconsideration was filed in compliance with the rules of the Supreme Court of Georgia and was denied, again by a vote of 4 to 2, on October 1, 1984 (see appendix, p. xx).

This court has jurisdiction over the petition for writ of certiorari under 28 USC §1257(3).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. This case involves Article I, Section VIII, Clause III of the Constitution of the United States (the "Commerce Clause"), which provides, in pertinent part:

> "The Congress shall have Power ... to regulate Commerce among the several States ...."

2. This case involves Article VI, Clause II of the Constitution of the United States (the "Supremacy Clause"), which provides, in pertinent part:

> "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof ... shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

3. This case involves Georgia Laws 1968, p. 1249, §1 (OCGA §16-10-25; formerly Ga. Code Ann. §26-2506), which provides:

> "A person who gives a false name or address to a law enforcement officer in the lawful discharge of his official duties with the intent of misleading the officer as to his identity is guilty of a misdemeanor."

4. This case involves the Fourth Amendment to the Constitution of the United States, which provides:

> "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized."

5. This case involves the Fourteenth Amend-

ment to the Constitution of the United States, which provides, in pertinent part:

> "No State ... shall ... deprive any person of life, liberty, or property, without due process of law ...."

STATEMENT OF THE CASE[2]

A. **Statement of Facts.**

The petitioner, Valencia Trice Batiste, is a young social worker from Miami, Florida. Prior to the encounter leading to this case, she had no significant criminal record. She is the mother of two children, ages 10 and 3, who depend entirely on her for support. She has been described by her employer as "pleasant, intelligent, reliable and conscientious." Her job performance as a social worker was "well above average." (TT 339-41, 369-71).

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[2] References to "MT" are to the transcript of the hearing in the trial court on petitioner's motion to suppress; "TT" refers to the trial transcript; and "R" refers to the record compiled by the Clerk of the Superior Court of Clayton County, Georgia, exclusive of the transcripts.

On April 15, 1982, Ms. Batiste arrived at the Atlanta Airport Terminal in Clayton County, Georgia. She was on a flight from Miami, Florida, and was en route to Augusta, Georgia (MT 73-75). Paul Markonni, an agent with the United States Department of Justice, Drug Enforcement Administration (DEA), was "watching the arrival" of this flight along with Curtis Mabie, an officer of the City of Atlanta Police Department. Mr. Markonni observed Ms. Batiste as she got off the airplane in the company of a man later identified as Neely Gary Williams, a co-defendant in the case below (MT 74).

Markonni thought that Ms. Batiste looked nervous. When Williams approached the ticket agent at the gate, she stood "off to his rear" and "was just looking around, intently looking at folks in the gate area ..." (MT74). Williams asked for directions to the gate for the departing flight to Augusta, and he and Ms. Batiste then began to walk down the concourse toward

gate "A-3" (MT 75). Ms. Batiste looked back at the arrival gate area twice as she was starting down the concourse (MT 75).

Markonni was suspicious of Williams and Batiste because of these observations, and he and Mabie followed them. He observed Ms. Batiste obtain two boarding passes and then sit down with Williams in the waiting area on the concourse near gate "A-3" (MT 76). Markonni then went to the gate desk and obtained the two suspects' tickets (MT 76-77). The tickets had been purchased with cash and were in numerical order. They had been purchased during the early morning hours of April 15, 1982 (MT 78). One ticket had a "call-back number" which Markonni tried. He found it working but got no answer (MT 79). The number was later determined to be Ms. Batiste's (MT 129, 151).

While he was attempting to make this call, Markonni noticed Ms. Batiste walk down the concourse to a concession and then to a pay telephone. He decided to interview Williams

while the two were separated (MT 80). Markonni approached Williams and identified himself as an officer looking for drugs or narcotics coming into the airport (MT 80-81). Williams volunteered to allow Markonni to search his person and his bags. Markonni thought Williams too cooperative, and did neither (MT 81, 85). Meanwhile, Markonni observed Ms. Batiste coming back toward gate "A-3." As she approached, she looked in Markonni's direction, made a "half-left," walked past him, and proceeded down the concourse a hundred feet or so to gate "A-7" where she sat down (MT 82-83, TT 37).

Markonni, by this time "fairly convinced ... that Ms. Batiste had it ...," thanked Williams for his cooperation and approached Ms. Batiste (MT 85). He introduced himself, displayed his credentials, and asked if he could talk to her (MT 86, 108). Markonni did not tell her what he wanted, that she did not have to talk to him, or that she was not under

arrest, and proceeded to question her (MT 106, 108). She said that her name was "Williams." On request, however, she produced a Florida driver's license in the name of Valencia Batiste (MT 89-90). When asked for an explanation, Ms. Batiste said that one of the names was her maiden name (MT 90). When asked where she was going, she said that she was going to Tennessee on a flight departing later (MT 86-87).

Officer Mabie did not participate in this conversation and did not have any conversation with Ms. Batiste until later (MT 107-108). Officer Mabie was not called to testify by the state in the proceeding below and the record is silent as to whether Mabie heard what was said by Ms. Batiste and Mr. Markonni. During part of the encounter, Mabie was seated across the concourse from Ms. Batiste and Mr. Markonni (TT 39; MT 87-88). According to Mr. Markonni, Mabie had "no conversation" with Ms. Batiste; and Markonni and Batiste "were the only two

that were talking" (MT 107-108).

Markonni then informed Ms. Batiste that he and Mabie were "narcotic officers looking for drugs or narcotics coming through the airport," and asked "if she would mind consenting to a search of her person and her bag" (MT 90). Initially, Ms. Batiste, who appeared increasingly nervous during her conversation with Mr. Markonni, indicated that she would allow the search (MT 90, TT 132). Markonni went to a telephone to call a policewoman to conduct the search (MT 90). While he was on the telephone, he heard Ms. Batiste ask Mabie if she could go to the bathroom. Mabie refused (MT 91). Markonni then informed Ms. Batiste that she was under arrest for possession of drugs and for "giving a false name to a law enforcement officer," a violation of Georgia law (MT 92).

Markonni and Mabie then took Ms. Batiste to an office, where Markonni asked for her pocketbook. She asked if he had a warrant. He did not reply, but instead took the pocketbook

forcibly and searched it (MT 93, 125-126). He found approximately one kilogram of a white powder alleged to contain cocaine and which was admitted as evidence at Ms. Batiste's trial (MT 93, TT 44, 175).

At the time of this incident, Markonni had credentials that indicated he was a deputy sheriff of Fulton County, Georgia, as well as a DEA agent, as he had obtained a Fulton County deputy's badge in October of 1979. However, he had never complied with the certification requirements of the Georgia Peace Officers Standards and Training Act (OCGA §35-8-1 et seq.), and the Peace Officers Standards and Training Council had not waived the certification requirements of the Act for Mr. Markonni. Mr. Markonni was not a "certified" Georgia law enforcement officer on April 15, 1982 (MT 100-101). Moreover, any authority Markonni may have had as a Georgia "law enforcement officer" was as a deputy sheriff of Fulton County, Georgia, and not neighboring Clayton County, Georgia, where the airport terminal is located

(MT 71-72).

B. Proceedings in the state court system.

On April 22, 1982, Ms. Batiste was indicted by the Clayton County Grand Jury for "trafficking in cocaine;" however, she was not charged with "giving a false name to a law enforcement officer" (R 4-5). Ms. Batiste entered a plea of "not guilty" on May 21, 1982, and moved to suppress the alleged cocaine as evidence (R 5, 6-10). The motion to suppress subsequently was amended (R 17-19) and came on for hearing on July 21, 1982 (MT 1).

The state contended in the trial court that Markonni's arrest of Ms. Batiste and the search of her pocketbook were lawful for two reasons: (1) Markonni was a Georgia "law enforcement officer" under OCGA §16-10-25 by virtue of having been deputized by the Sheriff of Fulton County, Georgia, and therefore was authorized to arrest petitioner for "giving a false name" and to search her pocketbook incident to the arrest; and (2) Markonni had

probable cause to arrest Batiste for possession of drugs because she fit the DEA "drug courier profile" (MT 72-73, 92).Petitioner contended that Markonni had no arrest powers as a state "law enforcement officer" because he was not "certified" as required by Georgia law and because he was outside the county of his appointment; that he had no authority as a DEA agent to arrest petitioner for a misdemeanor violation of state law; and that he lacked probable cause to arrest petitioner for possession of drugs (R6-10, 17-19).

On September 16, 1982, the trial court entered a one sentence order denying the motion to suppress, as amended. The order contains no findings of fact (R 21).[3] Ms. Batiste subsequently was tried, convicted of drug trafficking, and was sentenced to serve 15 years in the state penal system and to pay a fine of $250,000, the mandatory minimum punishment provided by Georgia law for possession of more than 400 grams of cocaine

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[3] See Appendix p. xiii.

(OCGA §16-13-31(a)(3)).

Ms. Batiste subsequently took her appeal to the Court of Appeals of Georgia, where the state contended for the first time that Mr. Markonni, as a DEA agent, was a "law enforcement officer" under OCGA §16-10-25 (State's brief in Georgia Court of Appeals, at page 21). Petitioner responded to this contention in a supplemental brief, arguing that the construction of OCGA §16-10-25 urged by the state was contrary to the rule of lenity applied in criminal cases (Ms. Batiste's reply brief in Georgia Court of Appeals, at pp. 6-7).

The Georgia Court of Appeals, sitting en banc, affirmed petitioner's conviction. Five judges concurred in Chief Judge McMurray's majority opinion; Judge Pope concurred specially; Judge Benham concurred in the judgment only; and Judges Carley and Sognier dissented. (See appendix, pp i-xxx; xiv-xviii).

The majority agreed with petitioner that Mr. Markonni had no authority to arrest her for

a violation of state law, either as a DEA agent or a Georgia law enforcement officer. Appendix pp. ii-iv). The majority reasoned, however, that Markonni could make an arrest as a "citizen" for a misdemeanor committed in his presence, and accepted the state's contention that the term "law enforcement officer" in OCGA §16-10-25 included DEA agents. The court concluded that petitioner had committed an offense against state law in Markonni's presence by giving an alias, since he was a federal agent acting in his official capacity at the time the statements were made. Thus, the arrest was a valid "citizen's arrest," and the search incident to it was legal. (Appendix pp. iv-vi).

Alternatively, the majority reasoned that petitioner had, in effect, given an alias to Mr. Mabie, the City of Atlanta police officer, because of his presence during Batiste's conversation with Markonni. The court went on to conclude that Markonni had made a valid "citizen's arrest" for a misdemeanor committed in

his presence, the giving of an alias to Mr. Mabie. The search of petitioner's pocketbook was therefore a valid search incident to a "citizen's arrest." (Appendix pp. v-vi).

The majority declined to address the issue of whether probable cause existed to arrest petitioner for possession of drugs. (Appendix p. ii).

Petitioner subsequently filed a motion for rehearing in conformity with the rules of the Court of Appeals of Georgia, in which she contended that the court's construction of OCGA §16-10-25 was unconstitutional, in that it attributed to the Georgia General Assembly a power to legislate within a sphere of authority reserved to or preempted by the Congress of the United States. She also contended that the majority's conclusion that she had given an alias to Mr. Mabie, the City of Atlanta police officer, was totally without support in the record. (Batiste's motion for rehearing in the Court of Appeals of Georgia,

at pp. 2-5). Ms. Batiste repeated these contentions in her petition for writ of certiorari in the Supreme Court of Georgia. (Batiste's petition for writ of certiorari in the Supreme Court of Georgia, at pp. 2, 4-6).

ARGUMENT

A. **Applicable Law.**

I. The General Assembly of Georgia is without authority to enact a criminal statute making it a violation of state law to give an alias or other false information to a federal narcotics officer engaged in an investigation of drug trafficking in interstate commerce.

The central issue in this case is whether conformity with the DEA "drug courier profile" provides probable cause authorizing a warrantless arrest of a person and search of his belongings. The Court of Appeals of Georgia avoided this issue entirely by characterizing the search of petitioner's pocketbook which revealed the alleged contraband as a search incident to a lawful arrest for a violation of state law.

This alleged violation of state law consisted of giving a false name to a "law enforcement officer" in violation of OCGA §16-10-25.

The Georgia Court of Appeals based its conclusion on alternative grounds. First, the court construed the terminology "law enforcement officer" in OCGA §16-10-25 to include Mr. Markonni, an agent of the United States Department of Justice, Drug Enforcement Administration. In the court's words (Appendix p. v):

> The record clearly shows probable cause for Markonni to have believed defendant Batiste guilty of committing the misdemeanor offense of giving a false name to a law enforcement officer. Code Ann. §26-2506 (now OCGA §16-10-25); Johnson v. State, 149 Ga. App. 273 (253 SE2d 889); Mallory v. State, 164 Ga. App. 569, 570 (4) (298 SE2d 290). Markonni was a law enforcement officer in the lawful discharge of his official duties (as a DEA agent) when defendant Batiste gave him a false name.

The question presented by this construction of OCGA §16-10-25 is whether the same is violative of the Commerce Clause and the Supremacy Clause of the Constitution of the

United States. Petitioner contends that it is.

The power to regulate interstate commerce, including the power to define criminal offenses in the nature of obstruction or hindrance of federal agents, belongs exclusively to the Congress of the United States. As this Court said in Northwestern States Portland Cement Company v. Minnesota, 358 U.S. 450, 458, 79 S.Ct. 357, 3 LE2d 421 (1959), a case involving the validity of state taxes on materials destined for interstate commerce:

> It has long been established that the Commerce Clause gives exclusive power to the Congress to regulate interstate commerce, and its failure to act on a subject in the area of taxation nevertheless requires that interstate commerce shall be free from any direct restrictions or impositions by the states.

The Act of the General Assembly of Georgia in question, as construed by the Georgia Court of Appeals, would concern itself with a matter which is by its very nature a matter of exclusively federal concern. Therefore, even were there no federal legislation on the same or

similar topics, the Act as construed would be unconstitutional.

There is, of course, a great deal of federal legislation on similar topics. For example, 18 USC §1001 et seq. define certain offenses relating to fraud and false statements to federal officials, 18 USC §1501 et seq. define certain offenses relating to obstruction of justice, and 18 USC §911 et seq. define certain offenses relating to false personation. Petitioner has found no authority directly on point holding that a federal offense is committed if a suspect in a federal criminal investigation gives an alias to a federal law enforcement official. It is nevertheless apparent in light of the extensive coverage of the federal criminal code, that the Congress has preempted or "occupied the field" of legislation in the area of criminal offenses against the United States. In these circumstances, even "complimentary" state laws would be in conflict with the Commerce and

Supremacy Clauses, and would be invalid. See, e.g., Campbell v. Hussey, 368 US 297, 82 S.Ct. 327, 7 LE2d 299 (1961); Cloverleaf Co. v. Patterson, 315 US 148, 62 S.Ct. 520 86 LE 754 (1942). As this court said in Hodel v. Virginia Surface Mining and Reclamation Association, Inc., 452 US 264, 290, 101 S.Ct. 2352, 69 LE2d 1 (1981):

> A wealth of precedent attests to Congressional authority to displace or preempt state laws regulating private activity affecting interstate commerce when these laws conflict with federal law.... Moreover, it is clear that the Commerce Clause empowers Congress to prohibit all - and not just inconsistent - state regulation of such activities .... Although such Congressional enactments obviously curtail or prohibit the state's prerogatives to make legislative choices respecting subjects the states may consider important, the Supremacy Clause permits no other result .... As the Court long ago stated, 'it is elementary and well settled that there can be no divided authority over interstate commerce, and the acts of Congress on that subject are supreme and exclusive.' Missouri Pacific R. Co. v. Stroud, 267 US 404, 408, 45 S.Ct. 243, 69 LE 683 (1925).

It must follow that the expansive construction placed on OCGA §16-10-25 by the Georgia Court of Appeals renders that enactment unconstitutional as construed. Consequently, the search of petitioner's pocketbook could not have been incident to a valid custodial arrest for a violation of Georgia law, simply because it cannot be a violation of Georgia law to give an alias to a federal narcotics agent engaged in an investigation of drug trafficking in interstate commerce.

The alternative theory advanced by the Georgia Court of Appeals for upholding the search of petitioner's pocketbook as incident to a valid arrest for a violation of state law, is based upon the premise that petitioner in effect gave an alias to a City of Atlanta police officer who was with Mr. Markonni during portions of his encounter with petitioner. In the court's words (Appendix pp. v-vi):

> Additionally, Markonni was accompanied by a City of Atlanta police officer who was participating in

> the investigation and present at the time defendant Batiste gave a false name. The officer's proximity at the time of the statement and involvement in the investigation present evidence that the offense of giving a false name to a law enforcement officer was also committed in regard to this police officer. The misrepresentation was clearly made within the presence and within the immediate knowledge of Markonni. The arrest by Markonni was effected immediately after perpetration of the offense. Therefore, Markonni's arrest of defendant Batiste was a lawful citizen's arrest.

The Court's premise that Ms. Batiste gave a false name to Mr. Mabie, the City of Atlanta officer, is totally without support in the record. Mr. Mabie was never called to testify by the state during the proceeding below. The record therefore is necessarily silent as to what Mr. Mabie heard. Moreover, agent Markonni testified that his companion was not involved in the conversation with Ms. Batiste and stayed in the background throughout the confrontation with her. During part of the confrontation, Mr. Mabie apparently was seated across the airport concourse. (MT 87-88, 107-108,

TT 39). There is no basis, therefore, for concluding that petitioner gave an alias to Mabie.

II. Petitioner's alleged conformity with certain elements of the DEA "drug courier profile" did not provide probable cause justifying a warrantless arrest of her person and a warrantless search of her pocketbook.

In Florida v. Royer, -- US --, 103 S.Ct. 1319, 75 LE2d 229 (1983), a case which is virtually indistinguishable on the facts from the case at bar, this court rejected the State of Florida's argument that probable cause existed to arrest Royer due to his conformity with the DEA "drug courier profile." Mr. Royer was a young man, casually dressed, carrying two heavily laden suitcases through the airport concourse. He appeared to be nervous, and seemed to be looking around in a manner which suggested that he was trying to detect and avoid police officers. He paid for his ticket in cash shortly before his plane was scheduled to depart. He was travelling under an assumed name, and was unable to give a

satisfactory explanation for the same when confronted by the police. During his confrontation with the police, Royer became increasingly nervous. See, 75 LE2d at 233-34.

In this case, we have a casually dressed, nervous young woman, who looked around as if to avoid police detection, who purchased her ticket in cash shortly before leaving Miami, who was travelling under an assumed name, and who became increasingly nervous as the encounter with the police progressed. It is therefore difficult to discern how the arrest and search in this case could be valid under the Fourth and Fourteenth Amendments, unless this court is to overrule Royer. Also see, Bowers v. State, 151 Ga. App. 46 (1979), affirmed, 245 Ga. 367 (1980), wherein the Court of Appeals of Georgia and the Supreme Court of Georgia both held that behavior consistent with the "drug courier profile" did not establish probable cause justifying an arrest; and Reid v. Georgia, 448 US 438, 100 S.Ct.

2752, 65 LE2d 890 (1980), wherein this court held that there was not sufficient evidence to justify even an investigatory or "Terry" stop, in a case in which the defendant not only behaved consistently with the profile, but fled when approached by the police.

Nor is there any good reason to question the wisdom of this court's holding in Royer. As Justice Brennan said in his concurring opinion in Royer, 75 LE2d at 246,

> These facts are clearly not sufficient to provide the reasonable suspicion of criminal activity necessary to justify the officer's subsequent seizure of Royer. Indeed, considered individually or collectively, they are perfectly consistent with innocent behavior and cannot possibly give rise to any inference supporting a reasonable suspicion of criminal activity. The officer's seizure of Royer, therefore, was illegal.
>
> Although I recognize that the traffic in illicit drugs is a matter of pressing national concern, that cannot excuse this court from exercising its unflagging duty to strike down official activity that exceeds the confines of the Constitution. In discussing the Fourth Amendment in Cooledge v. New Hampshire,

> 403 US 443 (1971), Justice Stewart stated: 'In times of unrest whether caused by crime or racial conflict or fear of internal subversion, this basic law and the values that it represents may appear unrealistic or 'extravagant' to some. But the values were those of the authors of our fundamental constitutional concepts.' Id., at 455 (plurality opinion. We must not allow our zeal for effective law enforcement to blind us to the peril to our free society that lies in this court's disregard of the protections afforded by the Fourth Amendment.

B. **Reasons for Granting the Writ**.

The court should grant the writ of certiorari in this case for several reasons. First, the case gives the court an opportunity to state directly that behavior consistent with the DEA "drug courier profile" does not provide probable cause authorizing a warrantless search. Although the court has previously dealt with that issue in Florida v. Royer, the focus of that case was not the question of whether probable cause to arrest existed, but instead was whether Royer had been arrested. In this case, there is no

dispute that Ms. Batiste had been subjected to full custodial arrest; and the state does not contend that any consent was given by her, either to the seizure or the subsequent search.

Second, the case involves an important question concerning the constitutionality of OCGA §16-10-25 as construed by the Georgia Court of Appeals. This question would be of sufficient importance to justify granting the writ even if there were no search and seizure questions involved in this case. It is obvious, moreover, that the court below construed OCGA §16-10-25 in the manner it did for the sole purposes of avoiding the Fourth Amendment issue and preventing the "escape" of a drug courier. In short, the Court of Appeals of Georgia construed OCGA §16-10-25 in an unconstitutional manner precisely to avoid having to vindicate petitioner's right against unreasonable searches and seizures. This court should not take lightly an action of the judiciary of the State of Georgia which not

only disregards unconstitutional conduct on the part of the police, but is unconstitutional in its own right.

Third, it would be appropriate to grant the writ in this case simply because the stakes are so high from the petitioner's point of view, and because it is doubtful that the relief sought herein is available elsewhere. See, Stone v. Powell, 428 US 465, 96 S.Ct. 3037, 49 LE2d 1067 (1976), holding that federal habeas corpus relief is not available to a person in state custody whose conviction is unconstitutional because of the admission of evidence obtained in violation of the Fourth Amendment, unless the state courts denied the convicted person an opportunity for full hearing on his Fourth Amendment claim. Petitioner contends, of course, that the Georgia courts have not provided her with a full, fair, and intellectually honest hearing on her Fourth Amendment claim. Stone v. Powell nevertheless places in her path a

serious obstacle to obtaining relief in the federal court system in the event this court denies certiorari.

CONCLUSION

For all of the reasons outlined above, petitioner respectfully requests that this court take jurisdiction of her case and issue a writ of certiorari to the Court of Appeals of Georgia.

CRUMBLEY & CRUMBLEY

By: Wade M. Crumbley
Wade M. Crumbley

Attorney for Petitioner

P.O. Box 775
McDonough, Georgia 30253
(404) 957-1815

CASE NO._____

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OCTOBER TERM, 1984

VALENCIA TRICE BATISTE a/k/a VERONICA WILLIAMS,	)	
Petitioner	)	ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF GEORGIA
vs.	)	
THE STATE OF GEORGIA,	)	
Respondent	)	

APPENDIX

JULY 16, 1984

67626 WILLIAMS v. THE STATE

68056 BATISTE v. THE STATE

McMURRAY, Chief Judge

Defendants were convicted of possessing with intent to distribute more than 400 grams of cocaine, in violation of the Georgia Controlled Substances Act. The enumerations of error as to each appellant are different and will be discussed separately.

Defendants were arrested at the Atlanta Airport after questioning by narcotics officers whose suspicions were aroused by their behavior after they got off a plane from Fort Lauderdale, Florida, together. A kilogram (2.2 pounds) of cocaine was found in a search of Ms. Batiste's purse; a small capsule of cocaine was found hidden in Williams' undershorts; and a small amount of marijuana was found in his bag. Defendants were tried only for possession of the cocaine in Ms. Batiste's purse. Other facts will be included in our discussion of the separate enumerations of error.

Defendant Batiste

1. Defendant Batiste contends the trial court erred by denying her motion to suppress the cocaine found in her purse because her arrest was illegal. The defendants were arrested by Paul Markonni, a special agent of the Drug Enforcement Administration (DEA). Markonni testified that he informed defendant Batiste that she was arrested because "we felt she was in possession of drugs" and also for giving a false name to law enforcement officers. Defendant Batiste argues that Markonni lacked probable cause to arrest her for possession of drugs and that Markonni lacked authority to arrest her for the misdemeanor offense of giving a false name to law enforcement officers.

Pretermitting the issue of whether there was probable cause for the arrest of defendant Batiste for possession of drugs, we address the authority of Markonni to make the arrest for the misdemeanor offense of giving a false name to a law enforcement officer. Obviously Markonni, under his arrest powers as a DEA agent, lacked

authority to arrest defendant Batiste for the misdemeanor offense against the State of Georgia (as opposed to a crime cognizable under the laws of the United States). See 21 USC §878(3). Also, while there was evidence that Markonni had been sworn in as a deputy sheriff of Fulton County and Markonni testified that he accomplished the arrest as a deputy sheriff of Fulton County, it was uncontraverted that Markonni had not attended (nor received a waiver by certificate of compliance of) certain instructional training courses under the provisions of the Georgia Peace Officer Standards and Training Act (then Code Ann. §92A, Ch.21, now OCGA §35-8-1, et seq.). (Also note these events transpired prior to the enactment of OCGA §35-9-15). Thus, Markonni had no power of arrest as a deputy sheriff because then Code Ann. §92A-2115 (now OCGA §35-8-17(a)) provides: "Any peace officer ... who does not comply with the provisions of this chapter shall not be authorized to exercise the powers of law enforcement officers generally and particularly shall

not be authorized to exercise the power of arrest." Failure to comply with the Act renders the arrest unauthorized. Mason v. State, 147 Ga. App. 179, 182(7) (248 SE2d 302). However, such a characterization of an arrest as unauthorized is not equivalent to a determination, nor even necessarily imply, that the arrest is illegal. Instead, "the noncomplying peace officer is thereby relegated to the status of a private citizen who is also authorized to effect an arrest under certain circumstances." Mason v. State, 147 Ga. App. 179, 182 (7), supra.

As he was unauthorized to exercise the arrest powers of a Fulton County deputy sheriff, the issue becomes whether Markonni as a private citizen could legally arrest defendant Batiste for giving a false name to a law enforcement officer, a misdemeanor offense to which Markonni's arrest powers as a DEA agent were not applicable. "A private person amy arrest an offender if the offense is committed within his presence or within his immediate knowledge."

Code §27-211 (now OCGA §17-4-60). A private person may make an arrest for a misdemeanor offense only when that offense occurs within his presence and moreover the arrest must occur immediately after the perpetration of the offense. Delegal v. State, 109 Ga. 518, 521-522 (1) (35 SE 105); Walker v. State, 144 Ga. App. 838 (2) (242 SE2d 753).

The record clearly shows probable cause for Markonni to have believed defendant Batiste guilty of committing the misdemeanor offense of giving a false name to a law enforcement officer. Code Ann. §26-2506 (now OCGA §16-10-25); Johnston v. State, 149 Ga. App. 273 (253 SE2d 889); Mallory v. State, 164 Ga. App. 569, 570 (4) (298 SE2d 290). Markonni was a law enforcement officer in the lawful discharge of his official duties (as a DEA agent) when defendant Batiste gave him a false name. Additionally, Markonni was accompanied by a City of Atlanta police officer who was participating in the investigation and present at the time defendant Batiste gave the false name. The

officer's proximity at the time of the statement and involvement in the investigation present evidence that the offense of giving a false name to a law enforcement officer was also committed in regard to this police officer. The misrepresentation was clearly made within the presence and within the immediate knowledge of Markonni. The arrest by Markonni was effected immediately after perpetration of the offense. Therefore, Markonni's arrest of defendant Batiste was a lawful citizen's arrest. After the lawful arrest of defendant Batiste the facts and circumstances surrounding her detention resulted in the lawful discovery that she was a drug trafficker. Cash v. State, 136 Ga. App. 149 (3) (221 SE2d 63); Walker v. State, 144 Ga. App. 838 (2), 839, supra.

Judgments affirmed. Deen, P.J., Quillian, P.J., Banke, P.J., Birdsong, J., and Carley, J. concur. Pope, Jr., concurs specially. Benham, J., concurs in the judgment only. Sognier, J., dissents.

POPE, Judge, concurring specially.

While I agree with the judgment of the majority, I base my decision upon an additional rationale somewhat different from that advanced in Division 1. At the time of appellees' arrests, Agent Markonni had not complied with the technical requirement of OCGA §35-8-9(a): completion of a certified basic training course for peace officers. However, OCGA §35-8-9(b) authorizes the certifying council to recognize and give credit, in lieu of completion of such course, for instruction received which is at least equivalent to the required basic training. Although Agent Markonni obtained no formal waiver pursuant to OCGA §35-8-9(b), the evidence adduced on the hearing of appellees' motion to suppress clearly shows Markonni's training and experience as a law enforcement officer to be <u>at least</u> the equivalent of a basic training course. Inter alia, Markonni testified that he has

sixteen years of experience as a federal law enforcement officer, eight of which have been spent in the enforcement of drug laws in major airports in this country. For five of these eight years, Markonni has been assigned to the Atlanta Airport detail. Indeed, in the particular area of police work in which he is employed and during the course of which he arrested appellees, Markonni's training and experience would certainly far exceed that offered in a basic training course.

Therefore, notwithstanding the absence of a formal waiver of his compliance, it is reasonable to assume that such would be credited to Markonni in lieu of the required basic training course. I find, as apparently did the trial judge, Markonni to be in substantial compliance with the spirit of OCGA §35-8-9 sufficient to make a valid arrest for violation of OCGA §16-10-25. See generally, Harvey v. State, 165 Ga. App. 7 (2) (299 SE2d 61) (1983); Davis v. State, 164 Ga. App. 312 (2) (295 SE2d 131) (1982). In light of the foregoing, I concur in

affirming the trial court's denial of appellees' motion to suppress.

67626 WILLIAMS v. THE STATE 23-13 to McM

68056 BATISTE v. THE STATE 23-62 to McM

SOGNIER, Judge, dissenting.

I respectfully dissent. Agent Markonni had no authority to arrest appellant Batiste for violation of a Georgia law (giving a false name to a police officer), and no probable cause to arrest Batiste on the ground that a federal felony offense was being committed in his presence.

In regard to Markonni's authority as a Fulton County deputy sheriff to arrest Batiste, Markonni testified that his boss called the sheriff of Fulton County and requested that Markonni and three other DEA agents be appointed deputy sheriffs. The sheriff complied with the request and Markonni was appointed a deputy sheriff. However, he also testified that he took no actions to meet the requireemnts for appointments as a peace officer set forth in then Code Ann. §92A-2109 (now OCGA §35-8-9), nor did he receive a certificate of compliance (waiver) by the Peace Officer Standards and

Training Council for having completed an "equivalent" course of instruction. Thus, under the express provisions of Code Ann. §92A-2115 (now OCGA §35-8-17(a)), Markonni was not authorized to exercise the powers of arrest, and this court has so stated in Mason v. State, 147 Ga. App. 179, 182 (7) (248 SE2d 302) (1978).

In regard to Markonni's arrest powers as a DEA agent, he is authorized to make arrests without a warrant for any felony if he has probable cause to believe that the person to be arrested has committed or is committing a felony. 21 USC §878 (3).

Markonni testified that Batiste's actions fit the "drug courier profile" which aroused his suspicions. While such facts would be sufficient to warrant an "articulable suspicion" that Batiste was carrying drugs, we have held consistently that an "articulable suspicion" is less than probable cause to make an arrest or conduct a search. Allen v. State, 140 Ga. App. 828, 830 (232 SE2d 250) (1976); Radowick v. State, 145 Ga. App. 231, 233 (244 SE2d 346)

(1978); Smith v. State, 159 Ga. App. 20, 22 (2) (282 SE2d 677) (1981). In the instant case, Markonni himself testified that "my suspicions as we all know are not probable cause." (Emphasis supplied).

It is well established that evidence that a defendant's behaviour fits the "drug courier profile" does not establish probable cause to make an arrest. Bowers v. State, 151 Ga. App. 46 (258 SE2d 623) (1979), affirmed 245 Ga. 367 (265 SE2d 57) (1980); Reid v. Georgia, 448 U.S. 438 (100 SC 2752, 65 LE2d 890) (1980); Florida v. Royer, U.S. (103 SC 1319) 75 LE2d 229) (1983).

Since Markonni's only basis for arresting Batiste was that she fit the "drug courier profile," he had no probable cause to arrest her. Bowers, Reid and Royer, supra. As the cocaine was obtained as a result of a search incident to an illegal arrest, it was not admissible in evidence. Powell v. State, 163 Ga. App. 801, 803 (295 SE2d 560) (1982). Acordingly, I would reverse.

IN THE SUPERIOR COURT OF CLAYTON COUNTY

STATE OF GEORGIA

STATE OF GEORGIA	)	
	)	
vs.	)	INDICTMENT NUMBER
	)	11-19748-1
VALENCIA TRICE BATISTE, a/k/a VERONICA WILLIAMS	)	

O R D E R

The defendant's Motion to Suppress and Amendment to Motion to Suppress having come on regularly for hearing before this Court on July 21, 1982 and the Court having heard evidence and arguments of counsel,

IT IS HEREBY ORDERED that the Defendant's Motion to Suppress is hereby DENIED.

SO ORDERED this 16th day of September, 1982.

W. H. Lott, Senior Judge
Georgia Superior Courts

Order prepared by:

Steven E. Lister
Assistant District Attorney
Clayton Judicial Circuit

COURT OF APPEALS

of the STATE OF GEORGIA

ATLANTA July 31, 1984

The Honorable Court of Appeals met pursuant to adjournment. The following order was passed:

68056 Valencia Trice Batiste v. The State (11-19748-1)

Upon consideration of the motion for a rehearing filed in this case, it is ordered that it be hereby denied.

Note: Please substitute new page 11 in original opinion, also substitute new special concurrence for original special concurrence dated July 16, 1984. (enclosure).

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta Jul.31, 1984

I certify that the above is a true extract from the minutes of the Court of Appeals of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written. Alton Hawk, Clerk

Judgments affirmed. Deen, P.J., Quillian, P.J., Banke, P.J., Birdsong, J., concur. Pope, P.J., concurs specially. Benham, J., concurrs in the judgment only. Carley, J., and Sognier, J., dissent.

67626 WILLIAMS v. THE STATE

68056 BATISTE v. THE STATE

POPE, Judge, concurring specially.

While I agree with the judgment of the majority, I base my decision upon a wholly different rationale from that advanced in Division 1. At the time of appellees' arrests, Agent Markonni had not complied with the technical requirements of OCGA §35-8-9(a): completion of a certified basic training course for peace officers. However, OCGA §35-8-9(b) authorizes the certifying council to recognize and give credit, in lieu of completion of such course, for instruction received which is at least equivalent to the required basic training. Although Agent Markonni obtained no formal waiver pursuant to OCGA §35-8-9(b), the evidence adduced on the hearing of appellees' motion to suppress clearly shows Markonni's training and experience as a law enforcement officer to be at least the equivalent of a basic training course. Inter alia, Markonni testified that he

has sixteen years of experience as a federal law enforcement officer, eight of which have been spent in the enforcement of drug laws in major airports in this country. For five of these eight years, Markonni has been assigned to the Atlanta Airport detail. Indeed, in the particular area of police work in which he is employed and during the course of which he arrested appellees, Markonni's training and experience would certainly far exceed that offered in a basic training course.

Therefore, notwithstanding the absence of a formal waiver of his compliance, it is reasonable to assume that such would be credited to Markonni in lieu of the required basic training course. I find, as apparently did the trial judge, markonni to be in substantial compliance with the spirit of OCGA §35-8-9 sufficient to make a valid arrest for violation of OCGA §16-10-25. See generally, Harvey v. State, 165 Ga. App. 7 (2) (299 SE2d 61) (1983); Davis v. State, 164 Ga. App. 312 (2) (295 SE2d

131) (1982). In light of the foregoing, I concur in affirming the trial court's denial of appellees' motion to suppress.

CLERK'S OFFICE

SUPREME COURT OF GEORGIA

Atlanta 9/13/84

Case No. 41524 Batiste a/k/a Williams v. State

The Supreme Court today denied writ of certiorari in this case. All the justices concur, except Smith & Bell, JJ., dissent. Weltner, J., disqualified.

Very truly yours,

JOLINE B. WILLIAMS, Clerk

CLERK'S OFFICE

SUPREME COURT OF GEORGIA

Atlanta Oct. 1, 1984

DEAR SIR:

The motion for reconsideration was denied today: Case No. 41524 Batiste a/k/a Williams v. The State.

Smith & Bell, JJ., dissent. Weltner, J., disqualified.

Yours very truly,

MRS. JOLINE B. WILLIAMS, Clerk